

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

GABRIEL GONZALEZ,

Plaintiff

v.

JOHN WENTZEL, ET AL.,

Defendants

:
:
:
:
:
:
:
:
:
:

CIVIL NO. 3:CV-15-184

(Judge Conaboy)

MEMORANDUM

Background

Gabriel Gonzalez (Plaintiff), an inmate presently confined at the State Correctional Institution, Coal Township, Pennsylvania (SCI-Coal Twp.), initiated this pro se civil rights action pursuant to 42 U.S.C. § 1983. Named as Defendants are Secretary John Wetzel of the Pennsylvania department of Corrections (DOC), Superintendent Vincent Mooney and Doctor Michael Moclock of SCI-Coal Twp.

According to the sparsely worded Complaint, Plaintiff has "multiple chronic care issues" and pain which are not being "properly addressed" by the SCI-Coal Twp. Medical staff. Doc. 1, ¶ IV. Gonzalez adds that although he was previously determined to be eligible for a handicapped cell in 2012, SCI-Coal Twp. RN Supervisor Yackiel, a non-defendant improperly denied his request for such continued placement on the grounds that he is not

handicapped.¹ The Complaint and attached exhibits generally conclude that the Defendants have violated his constitutional rights as well as the Americans with Disabilities Act (ADA). Gonzalez seeks injunctive relief including placement in a handicapped accessible cell and evaluation by an outside physician.

Presently pending is Defendant Doctor Moclock's motion to dismiss or in the alternative for entry of summary judgment. See Doc. 23. The motion has been opposed. See Doc. 27.

Discussion

Motion to Dismiss

Defendant Moclock's pending dispositive motion is supported by evidentiary materials outside the pleadings. Federal Rule of Civil Procedure 12(d) provides in part as follows:

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleading are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given reasonable opportunity to present all the material that is pertinent to the motion.

Fed. R. Civ. P. 12(b)(d).

This Court will not exclude the evidentiary materials accompanying Defendant Moclock's motion. Thus, the motion will be treated as solely seeking summary judgment. See Latham v. United States, 306 Fed. Appx. 716, 718 (3d Cir. 2009) (when a motion to dismiss has been framed alternatively as a motion for summary judgment such as in the present case, the alternative filing "is

1. Plaintiff acknowledges that due to a back condition, he has been designated for lower bunk, lower tier placement.

sufficient to place the parties on notice that summary judgment might be entered.")

Summary Judgment

Summary judgment is proper if "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); See also Saldana v. Kmart Corp., 260 F.3d 228, 231-32 (3d Cir. 2001). A factual dispute is "material" if it might affect the outcome of the suit under the applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "genuine" only if there is a sufficient evidentiary basis that would allow a reasonable fact-finder to return a verdict for the non-moving party. Id. at 248. The court must resolve all doubts as to the existence of a genuine issue of material fact in favor of the non-moving party. Saldana, 260 F.3d at 232; see also Reeder v. Sybron Transition Corp., 142 F.R.D. 607, 609 (M.D. Pa. 1992). Unsubstantiated arguments made in briefs are not considered evidence of asserted facts. Versarge v. Township of Clinton, 984 F.2d 1359, 1370 (3d Cir. 1993).

Once the moving party has shown that there is an absence of evidence to support the claims of the non-moving party, the non-moving party may not simply sit back and rest on the allegations in its complaint. See Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). Instead, it must "go beyond the pleadings and by [its] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is

a genuine issue for trial." Id. (internal quotations omitted); see also Saldana, 260 F.3d at 232 (citations omitted). Summary judgment should be granted where a party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden at trial." Celotex, 477 U.S. at 322-23. "'Such affirmative evidence - regardless of whether it is direct or circumstantial - must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance.'" Saldana, 260 F.3d at 232 (quoting Williams v. Borough of West Chester, 891 F.2d 458, 460-61 (3d Cir. 1989)).

ADA

The Moving Defendant's initial argument contends that there is no basis for liability because individuals cannot be held liable under Title II of the ADA. See Doc. 24, p. 4. As previously noted, the Complaint seeks partial relief under the ADA on the basis that Plaintiff was denied adequate care and accommodations for his chronic back and pain issues.

Plaintiff's opposing brief (Doc. 27) does not specifically address Defendant Moclock's contention that a viable ADA claim has not been set forth in the Complaint. Accordingly, this summary judgment argument will be deemed unopposed

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to

discrimination by such entity." 42 U.S.C. § 12132.² The ADA seeks "to assure even handed treatment and the opportunity for [disabled] individuals to participate in and benefit from programs [receiving financial assistance]. Southeastern Community College v. Davis, 442 U.S. 397 (1979).³ . P.C. v. McLaughlin, 913 F.2d 1033, 1041 (2d Cir. 1990). An ADA claim requires applicant to show that challenged action resulted from discriminatory animus based upon alleged disability. See Brown v. Pennsylvania Department of Corrections, 290 Fed. Appx. 463, 467 (3d Cir. 2008).

There is no argument that Gonzalez has failed to sufficiently demonstrate that he is disabled for purposes of the ADA. It has also been recognized that the provisions of the ADA are applicable to prisoners confined in state correctional institutions. See Pa. Dept. of Corrections v. Yeskey, 524 U.S. 206 (1998).

Doctor Moclock, relying on Williams v. Hayman, 657 F.Supp.2d 488, 502 (D.N.J. 2008) and similar decisions, contends that Title II of the ADA does not authorize suits against government officers in their individual capacities.

2. The regulations implementing the ADA define a "qualified individual with a disability" as:

"An individual with a disability who, with or without reasonable modifications to rules, policies or practices, . . . meets the essential eligibility requirements for the . . . participation in programs or activities provided by a public entity."

28 C.F.R. § 35.104 (1993).

3. The "evenhanded treatment" requirement does not, however, impose an affirmative obligation on public entities to expand existing programs but only that disabled individuals receive the same treatment as those who are not disabled.

The United States Court of Appeals for the Third Circuit in Emerson v. Thiel College, 296 F.3d 184, 189 (3d Cir. 2002) suggested in dicta that "individuals are not liable under Titles I and II of the ADA." See also Koslow v. Commonwealth of Pa., 302 F.3d 161, 178 (3d Cir. 2002). Other courts within this circuit have reached similar conclusions. See Issa v. Delaware State University, 2014 WL 3974535 *4(D.Del Aug. 11, 2014)(individual liability not available for ADA claims). Based upon the standards developed in Emerson and Issa, Defendant Moclock's request for dismissal of the ADA claim will be granted.

Deliberate Indifference

Plaintiff alleges that there was deliberate indifference to his medical needs, specifically that he was improperly denied eligibility for a handicapped cell. Defendant Moclock asserts that he first saw Plaintiff on October 23, 2014 that a decision to remove Plaintiff from a handicapped cell and relocate him to a bottom tier bottom bunk cell was made prior to said date. See Doc. 24, p. 10. In support of his contentions the Moving Defendant has submitted copies of Plaintiff's relevant institutional medical records and a declaration under penalty of perjury.

Specifically, Moclock avers that that based upon his own evaluation of the Plaintiff and the results of diagnostic testing he made a determination that Gonzalez did not meet the criteria to have an order for a permanent handicap cell." Doc. 24-2, ¶ 12. Despite that conclusion, Doctor Moclock notes that Plaintiff has continued to receive prescribed pain medication, a cane and was

conditionally moved into a handicap cell on or about January 9, 2015.⁴

The Eighth Amendment "requires prison officials to provide basic medical treatment to those whom it has incarcerated." Rouse v. Plantier, 182 F.3d 192, 197 (3d Cir. 1999) (citing Estelle v. Gamble, 429 U.S. 97 (1976)). In order to establish an Eighth Amendment medical claim, an inmate must allege acts or omissions by prison officials sufficiently harmful to evidence deliberate indifference to a serious medical need. See Spruill v. Gillis, 372 F.3d 218, 235 - 36 (3d Cir. 2004); Natale v. Camden Cty. Correctional Facility, 318 F.3d 575, 582 (3d Cir. 2003). In the context of medical care, the relevant inquiry is whether the defendant was: (1) deliberately indifferent (the subjective component) to (2) the plaintiff's serious medical needs (the objective component). Monmouth Cty. Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987); West v. Keve, 571 F.2d 158, 161 (3d Cir. 1979).

A serious medical need is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." Mines v. Levi, 2009 WL 839011 *7 (E.D. Pa. March 26, 2009) (quoting Colburn, 946 F.2d at 1023); Monmouth Cty. Corr. Inst. Inmates, 834 F.2d at 347. "[I]f unnecessary and wanton infliction of pain results as a consequence of denial or delay in the provision of adequate medical care, the medical need is of the

4. Doctor Moclock acknowledges that if another inmate with a more serious medical need enters the prison, the potential exists for Gonzalez to be removed from the handicapped accessible cell.

serious nature contemplated by the Eighth Amendment." Young v. Kazmerski, 266 Fed. Appx. 191, 193 (3d Cir. 2008) (quoting Monmouth Cty. Corr. Inst. Inmates, 834 F.2d at 347).

It is undisputed that Plaintiff underwent a partial discectomy in 2006 to correct a disc herniation. Thereafter, Gonzalez has continued to complain of pain and back spasms and has been continuously prescribed Methadone since 2005 and has also been issued a cane and had a handicapped cell assignment from December 2012 to August 12, 2014. Based upon those considerations, this Court is satisfied that the serious medical need requirement has been satisfied at this juncture in the proceedings.

The Supreme Court has established that the proper analysis for deliberate indifference is whether a prison official "acted or failed to act despite his knowledge of a substantial risk of serious harm." Farmer v. Brennan, 511 U.S. 825, 841 (1994). A complaint that a physician or a medical department "has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment [as] medical malpractice does not become a constitutional violation merely because the victim is a prisoner." Estelle, 429 U.S. at 106. When a prisoner has actually been provided with medical treatment, one cannot always conclude that, if such treatment was inadequate, it was no more than mere negligence. See Durmer v. O'Carroll, 991 F.2d 64, 69 (3d Cir. 1993). It is true, however, that if inadequate treatment results simply from an error in medical judgment, there is no constitutional violation. See id. However, where a failure or delay in providing prescribed treatment

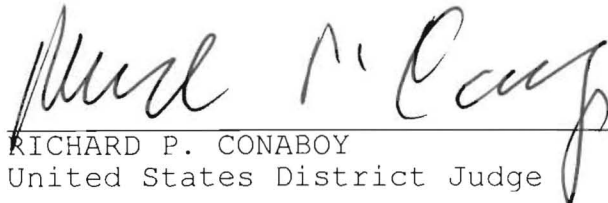
is deliberate and motivated by non-medical factors, a constitutional claim may be presented. See id.; Ordonez v. Yost, 289 Fed. Appx. 553, 555 (3d Cir. 2008) ("deliberate indifference is proven if necessary medical treatment is delayed for non-medical reasons.")

Moreover, a prisoner's disagreement with "evaluations and opinions regarding him" are insufficient to set forth an actionable constitutional claim. Paine v. Baker, 595 F.2d 197, 201 (4th Cir. 1979). Accordingly, since the undisputed record shows that Gonzalez has been provided with ongoing treatment (including x-rays, MRI, back surgery, and pain medication) and that his claims are solely premised upon his disagreement with a medical determinations and evaluations that a handicapped cell was not medically necessary in his case which was made by the Moving Defendant, Doctor Rashida Laurence as well as other members of the prison's medical staff, a viable deliberate indifference claim has not been stated under Estelle.

This determination is bolstered by the fact that Plaintiff has continued to be provided with pain medication; a lower tier, bottom bunk designation; a cane; and not alleged that there was any specific medical treatment which he should have received but was denied for a non-medical reason or that any prescribed care was improperly delayed. Moreover, the record also shows that Doctor Moclock advised the prison's Health Card Administrator that while Plaintiff did not satisfy the criteria for handicapped cell placement, the physician would not object if Plaintiff was placed in a handicapped cell without a medical order provided that an inmate with a more serious medical need was not displaced.

Finally, the undisputed record shows that because a handicap cell was available Plaintiff has been transferred to a handicapped cell without a medical order in January, 2015 shortly after the initiation of this action. As such, his request for such injunctive relief would appear to be moot.

Pursuant to the above discussion, Plaintiff's allegations at best set forth a claim of negligence against Doctor Moclock. However, allegations which sounds in negligence cannot be pursued under § 1983 under Durmer.


RICHARD P. CONABOY
United States District Judge

DATED: FEBRUARY 10th, 2016

FILED
SCRANTON

FEB 10 2016

PER 